

Introduced by Senator Hall

February 16, 2016

An act to amend Sections 1197.5 and 1199.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1063, as introduced, Hall. Conditions of employment: wage differential: race or ethnicity.

Existing law prohibits an employer from paying any of its employees at wage rates less than the rates paid to employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions, unless the employer demonstrates that specific, reasonably applied factors account for the entire wage differential. Existing law authorizes an employee paid lesser wages in violation of this prohibition to file a complaint with the Division of Labor Standards Enforcement, and authorizes the employee, the division, or the Department of Industrial Relations to commence a civil action for the wages the employee was deprived of because of the violation, interest on those wages, and liquidated damages. Under existing law, an employer or other person who violates or causes a violation of that prohibition, or who reduces the wages of any employee in order to comply with that prohibition, is guilty of a misdemeanor.

This bill would expand that prohibition to also prohibit an employer from paying any of its employees at wage rates less than the rates paid to employees of another race or ethnicity for substantially similar work, as specified above. By expanding the scope of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1197.5 of the Labor Code is amended to
2 read:

3 1197.5. (a) An employer shall not pay any of its employees
4 at wage rates less than the rates paid to employees of the opposite
5 sex for substantially similar work, when viewed as a composite of
6 skill, effort, and responsibility, and performed under similar
7 working conditions, except where the employer demonstrates:

8 (1) The wage differential is based upon one or more of the
9 following factors:

10 (A) A seniority system.

11 (B) A merit system.

12 (C) A system that measures earnings by quantity or quality of
13 production.

14 (D) A bona fide factor other than sex, such as education,
15 training, or experience. This factor shall apply only if the employer
16 demonstrates that the factor is not based on or derived from a
17 sex-based differential in compensation, is job related with respect
18 to the position in question, and is consistent with a business
19 necessity. For purposes of this subparagraph, “business necessity”
20 means an overriding legitimate business purpose such that the
21 factor relied upon effectively fulfills the business purpose it is
22 supposed to serve. This defense shall not apply if the employee
23 demonstrates that an alternative business practice exists that would
24 serve the same business purpose without producing the wage
25 differential.

26 (2) Each factor relied upon is applied reasonably.

27 (3) The one or more factors relied upon account for the entire
28 wage differential.

29 (b) *An employer shall not pay any of its employees at wage rates*
30 *less than the rates paid to employees of another race or ethnicity*

1 *for substantially similar work, when viewed as a composite of skill,*
2 *effort, and responsibility, and performed under similar working*
3 *conditions, except where the employer demonstrates:*

4 *(1) The wage differential is based upon one or more of the*
5 *following factors:*

6 *(A) A seniority system.*

7 *(B) A merit system.*

8 *(C) A system that measures earnings by quantity or quality of*
9 *production.*

10 *(D) A bona fide factor other than race or ethnicity, such as*
11 *education, training, or experience. This factor shall apply only if*
12 *the employer demonstrates that the factor is not based on or*
13 *derived from a race- or ethnicity-based differential in*
14 *compensation, is job related with respect to the position in*
15 *question, and is consistent with a business necessity. For purposes*
16 *of this subparagraph, “business necessity” means an overriding*
17 *legitimate business purpose such that the factor relied upon*
18 *effectively fulfills the business purpose it is supposed to serve. This*
19 *defense shall not apply if the employee demonstrates that an*
20 *alternative business practice exists that would serve the same*
21 *business purpose without producing the wage differential.*

22 *(2) Each factor relied upon is applied reasonably.*

23 *(3) The one or more factors relied upon account for the entire*
24 *wage differential.*

25 ~~(b)~~

26 *(c) Any employer who violates subdivision (a) or (b) is liable*
27 *to the employee affected in the amount of the wages, and interest*
28 *thereon, of which the employee is deprived by reason of the*
29 *violation, and an additional equal amount as liquidated damages.*

30 ~~(e)~~

31 *(d) The Division of Labor Standards Enforcement shall*
32 *administer and enforce this section. If the division finds that an*
33 *employer has violated this section, it may supervise the payment*
34 *of wages and interest found to be due and unpaid to employees*
35 *under subdivision-(a): (a) or (b). Acceptance of payment in full*
36 *made by an employer and approved by the division shall constitute*
37 *a waiver on the part of the employee of the employee’s cause of*
38 *action under subdivision-(g): (h).*

39 ~~(d)~~

1 (e) Every employer shall maintain records of the wages and
2 wage rates, job classifications, and other terms and conditions of
3 employment of the persons employed by the employer. All of the
4 records shall be kept on file for a period of three years.

5 ~~(e)~~

6 (f) Any employee may file a complaint with the division that
7 the wages paid are less than the wages to which the employee is
8 entitled under subdivision (a) *or* (b) or that the employer is in
9 violation of subdivision ~~(j)~~ (k). The complaint shall be investigated
10 as provided in subdivision (b) of Section 98.7. The division shall
11 keep confidential the name of any employee who submits to the
12 division a complaint regarding an alleged violation of subdivision
13 ~~(a)~~ (a), (b), or ~~(j)~~ (k) until the division establishes the validity of
14 the complaint, unless the division must abridge confidentiality to
15 investigate the complaint. The name of the complaining employee
16 shall remain confidential if the complaint is withdrawn before the
17 confidentiality is abridged by the division. The division shall take
18 all proceedings necessary to enforce the payment of any sums
19 found to be due and unpaid to these employees.

20 ~~(f)~~

21 (g) The department or division may commence and prosecute,
22 unless otherwise requested by the employee or affected group of
23 employees, a civil action on behalf of the employee and on behalf
24 of a similarly affected group of employees to recover unpaid wages
25 and liquidated damages under subdivision ~~(a)~~ (a) *or* (b), and in
26 addition shall be entitled to recover costs of suit. The consent of
27 any employee to the bringing of any action shall constitute a waiver
28 on the part of the employee of the employee's cause of action
29 under subdivision ~~(g)~~ (h) unless the action is dismissed without
30 prejudice by the department or the division, except that the
31 employee may intervene in the suit or may initiate independent
32 action if the suit has not been determined within 180 days from
33 the date of the filing of the complaint.

34 ~~(g)~~

35 (h) Any employee receiving less than the wage to which the
36 employee is entitled under this section may recover in a civil action
37 the balance of the wages, including interest thereon, and an equal
38 amount as liquidated damages, together with the costs of the suit
39 and reasonable attorney's fees, notwithstanding any agreement to
40 work for a lesser wage.

~~(h)~~

(i) A civil action to recover wages under subdivision (a) *or* (b) may be commenced no later than two years after the cause of action occurs, except that a cause of action arising out of a willful violation may be commenced no later than three years after the cause of action occurs.

~~(i)~~

(j) If an employee recovers amounts due the employee under subdivision ~~(b)~~, (c), and also files a complaint or brings an action under subdivision (d) of Section 206 of Title 29 of the United States Code which results in an additional recovery under federal law for the same violation, the employee shall return to the employer the amounts recovered under subdivision ~~(b)~~, (c), or the amounts recovered under federal law, whichever is less.

~~(j)~~

(k) (1) An employer shall not discharge, or in any manner discriminate or retaliate against, any employee by reason of any action taken by the employee to invoke or assist in any manner the enforcement of this section. An employer shall not prohibit an employee from disclosing the employee's own wages, discussing the wages of others, inquiring about another employee's wages, or aiding or encouraging any other employee to exercise his or her rights under this section. Nothing in this section creates an obligation to disclose wages.

(2) Any employee who has been discharged, discriminated or retaliated against, in the terms and conditions of his or her employment because the employee engaged in any conduct delineated in this section may recover in a civil action reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer, including interest thereon, as well as appropriate equitable relief.

(3) A civil action brought under this subdivision may be commenced no later than one year after the cause of action occurs.

SEC. 2. Section 1199.5 of the Labor Code is amended to read:

1199.5. Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment for not more than six months, or by both, who willfully does any of the following:

1 (a) Pays or causes to be paid any employee a wage less than the
2 rate paid to an employee of ~~the opposite sex~~ *another sex, race, or*
3 *ethnicity*, as required by Section 1197.5.

4 (b) Reduces the wages of any employee in order to comply with
5 Section 1197.5.

6 No person shall be imprisoned pursuant to this section except
7 for an offense committed after the conviction of the person for a
8 prior offense pursuant to this section.

9 SEC. 3. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.